



Costs Decision

Site visit made on 2 May 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Costs application in relation to Appeal Ref: APP/K0425/D/22/3293831 Hunts Hill Farm, Hunts Hill Lane, Naphill HP14 4RJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Cyrus Birgani for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for 'householder application for a detached garage'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can relate to procedural matters (the process) or substantive matters (relating to the issues arising from the merits of the appeal).
3. Unreasonable behaviour of a substantive nature can include preventing or delaying development that should clearly be permitted, and it can also include the making of vague, generalised or inaccurate assertions which are unsupported by objective analysis.
4. The development consented under planning application reference 18/06698/ful) was the same as that subject of the appeal. However, the making of the Wycombe District Council Wycombe District Local Plan in 2019 (the Local Plan), resulted in a change to the development plan between the dates that the two applications were determined. Furthermore, the Framework has been updated and the Wycombe District Council Householder Planning and Design Guidance Supplementary Planning Document – 2020 was also adopted in the time between which the two applications were determined.
5. The Council was correct to consider the development proposal as a residential outbuilding rather than an incidental operation and to make their decision having regard to the most relevant and up-to-date information. Furthermore, it provided a complete, precise and specific reason for refusal based on development plan policies and material considerations. Furthermore, in coming to an alternative view regarding the acceptability of the proposal from that of the previous application, the Council gave due regard to the planning history of the site as well as other relevant material considerations.

6. Rather than implementing the previous planning permission, the applicant chose to make the planning application. I understand their frustration that prior to the determination of the application, the previous planning permission expired. However, from the evidence before me, even if the Council had determined the application within the prescribed period, it would not necessarily have been determined prior to the expiry of the previous permission.
7. Even if the case officer made generally supportive comments regarding the scheme during their site visit, which was undertaken prior to the expiry of the earlier permission, any such comments were not binding upon the Council, as the application was still under consideration. However, I appreciate that the appellant would be vexed, if during their site visit the case officer did not notify them of the changes that had taken place to the development plan and other planning guidance since the previous application was determined, as well as the potential implications that the changes would have to the outcome of the planning application. Although not obliged to do so, if the case officer had so notified the appellant either prior to or during the site visit, I accept that it would still have been possible for the appellant to implement the earlier planning permission prior to its expiry.
8. However, the Development Plan, the National Planning Policy Framework and supplementary planning documents are publicly accessible documents, and the expiry date of the earlier permission was known by the appellant at the time of making the application. Furthermore, the appellant did not seek to utilise the Council's pre-application advice service prior to making the planning application, and notwithstanding that paragraph 38 of the National Planning Policy Framework encourages Councils to work proactively with applicants, it is not a requirement of the Council to provide planning advice during the consideration of a planning application.
9. For the reasons given above, I do not find that unreasonable behaviour of a substantive nature has been demonstrated by the Council.
10. Paragraph 47 of the PPG provides examples of unreasonable behaviours by Local Planning Authorities (LPA) relating to procedural matters. These include failure to adhere to deadlines. While delays related to Council resources and Covid 19 absences are regrettable, delays caused by such factors do not, on their own, amount to unreasonable behaviour of the Council.
11. However, PPG paragraph 48 indicates that if it is clear that the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation. Notwithstanding that the appellant had the right to submit an appeal based on the Council's failure to determine the application within the prescribed period, and, that telephone conversations may have taken place between the appellant and the case officer prior to the determination of the planning application, it has not been adequately demonstrated that a proper explanation was given to the appellant for why the Council was not able to determine the application within the prescribed or agreed time limits. However, given that this appeal has been dismissed, I cannot conclude that an earlier or different determination would have prevented an appeal from being necessary.
12. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense to the applicant during the appeal process has

not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not therefore justified.

V Simpson

INSPECTOR